[President]

the wife or the servant was away from his company. That was the old common law type of litigation. It was not penal. No damages could be claimed except for the loss of company. Similarly, if a daughter was seduced, the action available was for damages for the number of hours the daughter was away from the father and not in his society and service. The action lay because the father was deprived of the company of the daughter and of her services. That was the old common law. Right through, it proceeded on the lines on which property was being dealt with. And therefore, if a man killed another, he could be prosecuted, but no damages could be claimed. That was considered not suitable to the times and so, in 1845, Lord Campbell, who was very fiercely assailed in the Houses of Parliament for attempting to bring reform in this branch of the law, succeeded in getting a Bill passed.

The only question is whether it should be adopted in Travancore.

Mr. N. Ramakrishna Pillai: Sir, I beg to move that the Bill may be referred to a Select Committee consisting of the following members:

Messrs.
1. G. Narayana Aiyar
2. N. Narayana Kurup
3. K. A. Raman Pillai
4. Ravi Varma Valia Raja
5. A. N. Sathianesan
6. K. Shahul Hameed
7. T. M. Chidambarathanu Pillai
8. P. Gopalan
9. G. Madhavan
10. Gabriel Nadar
11. M. Govindan
12. K. G. Narayana Panicker

The question that the Travancore Fatal Accidents Bill be referred to a select Committee consisting of the above members was put to vote and declared carried.

President: The matter is referred to the Select Committee.

THE TRAVANCORE LAW REFORMS (MISCELLANEOUS PROVISIONS) BILL.

Mr. N. Ramakrishna Pillai: Sir, I move to introduce the Travancore Law Reforms (Miscellaneous Provisions) Bill and pray that the Bill may be read in Council.

LIBRARY ARCHIVES Kerala Legislative Assembly

Secretary: The short title of the Bill shall be The Travancore Law Reforms (Miscellaneous Provisions) Bill.

Mr. N. Ramakrishna Pillai: Two questions entangled with one another often arise in the law of Torts.

The causing of the death of a human being does not create any liability in torts, because it is not a tort at all to kill a person.

But if I have committed a tort against a person not involving that person's death it creates liability and an action is maintainable against the wrong-doer but if either of these persons dies, the right of action does not survive under the existing law. This is expressed by the maxim *Action personalis moritur cum persona*, that is, the cause of action dies with the death of the person against whom a right of action subsists or in whom a right of action vests.

President: Unless the suit is brought between the time of the injury and the time of the death, no damage is possible.

Mr. N. Ramakrishna Pillai: Yes, Sir.

If I have committed a tort not involving the death of the person, I am bound to give him damages. But as soon as he dies, on account of the operation of the rule of law quoted above the right of action is extinguished. The cause of action for damages is said to die with the person. Simlarly, a person who inflicts an injury can also escape if he dies.

President: In other words, if he hits hard he can escape. (Laughter).

Mr. N. Ramakrishna Pillai: The position was thus extremely anomalous. In the case of Railway accidents, to which I referred, it was found that the Railway companies had to pay heavy damages in cases of injuries not resulting in death, whereas the companies escaped if as a result of the injuries death ensued. This state of affairs continued up to 1934 in England, when remedies began to be thought of. Certain exemptions began to be introduced into the common law, as for instance, where the injury caused was to the estate of the deceased person. But so far as personal injuries were concerned, there was absolutely no remedy if the person died. While in the middle of the last century, railway accidents brought this injustice into prominence, motor accidents which are now far more numerous than railway accidents, have made the injustice of the rule intolerable. A committee was therefore appointed by the Lord Chancellor to recommend remedial legislation in regard to this and other matters. The Committee suggested a measure which was passed into law and it is known as The Law Reform (Miscellaneous Provisions) Act.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. N. Ramakrishna Pillai]

The first Act was in regard to *survival of actions*. That Act abrogated the rule I have already referred to. In its place it enacted a general rule that in future all causes of action suisisting against or vesting in any person on his death (except in four cases) shall survive against or, as the case may be for the benefit of his estate. The four excepted cases are with respect to causes of action for (1) defamation (2) seduction (3) inducing one spouse to live apart from the other and (4) damages for adultery. So, in every other case the right of action now survices the death for the benefit of the deceased's estate or against his estate as the case may be. Formerly certain statutory provisions gave a remedy in respect of any injury to the estate. On account of the general provision contained in this Bill these statutory provisions have become unnecessary and it may now be taken to be the general rule that all actions survive except in the four cases excepted.

The Law Reforms Committee drafted another enactment and that was also called the Law Reform (miscellaneous provisions) Act, and it dealt with *contribution between joint tort-feasors*. The law in this matter is that a person who is proceeded against for damages in respect of an injury and who is compelled to pay damages is not entitled to contribution from his co-tortfeasors. That was the law. Now the Committee made a provision to the effect that a joint tort-feasor who is compelled to pay compensation is entitled to contribution. That is part 2 of the Bill.

President: You are referring the matter to the Select Committee. This is a very complicated provision and I think it better that the Select Committee disposes of it.

Mr. N. Ramakrishna Pillai: Yes, Sir.

I may also refer to another matter, namely, the law of *contributory negligence*. Honourable members may be aware that the existing law on the matter is very unsatisfactory. Wherever a defendant was able to show that there was contributory negligence, the plaintiff became practically disentitled to get anything. On account of the reform introduced in the English law, a plaintiff can now get compensation in proprotion to the guilt involved. That is part 3 of this Bill.

It was considered necessary to make provisions in regard to all the three subjects in this Bill and these are dealt with in parts 1, 2, and 3.

The immediate necessity for the introduction of this measure arose on account of the observation of the High Court in a recent case. His Lordship the Chief Justice remarked in

LIBRARY ARCHIVES Kerala Legislative Assembly

the course of the judgment in that case: "It is high time that the unjust results flowing from the application of the rule of Common Law, viz., *Actio personalis moritur cum persona* should be counteracted by an appropriate legislative measure of which parallels may be found in the English Statute Book". It was considered necessary to introduce the Bill in accordance with this suggestion.

I might inform the honourable members that there is no such statute anywhere in India and that we are the first to adopt a measure on the lines of the English statutes.

Mr. S. Narayana Aiyar: I second the motion.

Mr. N. Ramakrishna Pillai: Sir, I submit that the same Select Committee may consider this Bill also.

The question that the Bill be referred to the same Select Committee was put to vote and carried.

President: Order, order. The House will now adjourn and meet again at 11 A. M. tomorrow.

The House adjourned at 1-7 P. M.

S. VAIDYANATHA AIYAR,
Secretary to the Sri Chitra State Council.

LIBRARY ARCHIVES Kerala Legislative Assembly